incapacity was on the contestants. *Kerkhoff v. Monkemeier* (1920, Iowa) 175 N. W. 762.

A large minority of courts hold with Iowa as to the burden of proving testamentary incapacity but to treat such a rule as a consequence of the presumption of sanity seems clearly erroneous. See COMMENT (1917) 26 YALE LAW JOURNAL, 777; *cf. Thomson v. State* (1919, Fla.) 83 So. 291. But the rule itself has strong reason behind it. The presumption is not, on sound theory, itself evidence of the fact presumed. *Wheeler's Appeal* (1917) 91 Conn. 388, 100 Atl. 13, overruling *Sturdevant's Appeal* (1899) 71 Conn. 392, 42 Atl. 70. The fact on which it is based, that most men who duly execute a will are of sound mind, has strong probative value. See COMMENT, *supra*. And the Iowa rule seems in practice to be the simplest way of giving expression to this fact.

EVIDENCE—WITNESSES—CHILD.—The plaintiff when five years old was bitten by the defendant's dog. A suit for damages was begun and the case came to trial three years later. The plaintiff, who was a bright child and had due appreciation of the significance of an oath, was permitted to testify. *Held*, that such testimony was properly admitted. *Maynard v. Keough* (1920, Minn.) 175 N. W. 891.

The court said that even though the child was perhaps too immature to testify at the time of the occurrence, she was competent at the time of the trial, which is the time competency is to be determined; that her intelligence showed she could remember the incident; and that the distinctness of the witness's memory goes to the weight of the evidence. This seems sound.

FRAUD—LEASE—RESCISSION.—The plaintiff in writing leased certain premises to the defendant, rent to be paid quarterly. The defendant took possession in 1916 and paid rent until 1918 and then defaulted. The plaintiff sued for the rent due. The defendant again defaulted on the next payment, and the plaintiff brought an action for the rent for that term. The two actions were consolidated, and the defence was that the plaintiff had induced the defendant to accept the lease by fraud. He had not rescinded upon discovery of the fraud, but retained possession. *Held*, that the plaintiff should recover. *Defiel v. Rosenberg* (1919, Minn.) 174 N. W. 838.

The court correctly stated that the proper remedy of the defendant was prompt rescission, upon discovery of the fraud, of the unexpired term of the lease, and an action for damages or proper relief which would restore him as nearly as possible to his position before accepting the lease. As to re-tender of consideration in rescission, see *supra*, CASE NOTES, *sub. tit.*, FRAUD.

INSURANCE—LIFE INSURANCE—ASSIGNMENT OF POLICY TO ONE WITHOUT INSURABLE INTEREST VALID.—The holder of a policy of life insurance "taken out" in good faith and payable to "his executors, administrators, or assigns" assigned it for value to one who had no insurable interest in his life. The assignee notified the company of the assignment and paid the premiums thereafter until the insured's death. The executor then filed a bill to set aside the assignment. *Held*, that the bill be dismissed. *Hawley v. Aetna Life Ins. Co.* (1919, Ill.) 125 N. E. 707.

The court stated: "To sustain the doctrine of counsel for appellant on this point would be, in effect, to hold that a valid policy cannot be sold in the best market but must be either surrendered to the company or sold to a person having an insurable interest, and this would in most cases result in compelling the policy holder to surrender his policy to the insuring company at its own figure." It is now generally admitted that one who has insured his own life in good faith has a *power* to "assign the policy" to another who has no insurable interest in the